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ELEVENTH LEGISLATIVE DAY
THURSDAY, JANUARY 21, 2010

Senate Chamber

President Little called the Senate to order at 11:15 a.m.

Roll call showed all members present except Senators Bock and Siddoway, absent and formally excused by the Chair; and Senators Cameron, Coiner, Lodge, and McGee, absent and excused.

Prayer was offered by Chaplain Montie Ralstin.

The Pledge of Allegiance was led by Elise Knapp, Page.

The Senate advanced to the Third Order of Business.

Reading and Correction of the Journal

The JUDICIARY AND RULES Committee reports that the Senate Journal of the proceedings of January 20, 2010, was read and approved as corrected.

DARRINGTON, Chairman

There being no objection, the report was adopted and ordered filed in the office of the Secretary of the Senate.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Sixth Order of Business.

Reports of Standing Committees

January 21, 2010

The JUDICIARY AND RULES Committee reports that [S 1259](#) and [S 1260](#) have been correctly printed.

DARRINGTON, Chairman

[S 1259](#) was referred to the Transportation Committee.

[S 1260](#) was referred to the Education Committee.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Eleventh Order of Business.

Introduction, First Reading, and Reference of Bills, House Petitions, Resolutions, and Memorials

S 1261
BY KELLY
AN ACT

RELATING TO LOBBYING; AMENDING CHAPTER 66, TITLE 67, IDAHO CODE, BY THE ADDITION OF A

NEW SECTION 67-6617A, IDAHO CODE, TO PROHIBIT LOBBYING AND REGISTRATION AS LOBBYISTS BY EXECUTIVE OFFICIALS OR LEGISLATORS FOR A PERIOD OF ONE YEAR FROM TERMINATION OF OFFICE; AMENDING SECTION 67-6625, IDAHO CODE, TO PROVIDE PENALTIES FOR VIOLATING THE PROHIBITION OF LOBBYING AND REGISTRATION AS LOBBYISTS BY EXECUTIVE OFFICIALS OR LEGISLATORS FOR A PERIOD OF ONE YEAR FROM TERMINATION OF OFFICE AND TO MAKE TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY.

S 1262
BY KELLY
AN ACT

RELATING TO PUBLIC OFFICIALS; AMENDING CHAPTER 7, TITLE 59, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 59-704B, IDAHO CODE, TO PROVIDE FOR A COOLING-OFF PERIOD OF ONE YEAR UNDER CERTAIN CONDITIONS FOR PUBLIC OFFICIALS WHEN THEY LEAVE PUBLIC OFFICE; AND AMENDING SECTION 59-705, IDAHO CODE, TO PROVIDE A CIVIL PENALTY FOR VIOLATING THE COOLING-OFF PERIOD BY FORMER PUBLIC OFFICIALS.

S 1263
BY KELLY
AN ACT

RELATING TO CAMPAIGN FINANCE; AMENDING CHAPTER 66, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-6607A, IDAHO CODE, TO PROHIBIT ACCEPTING CERTAIN CAMPAIGN CONTRIBUTIONS, TO PROVIDE EXCEPTIONS AND TO PROVIDE PENALTIES; AND DECLARING AN EMERGENCY.

S 1264
BY BOCK
AN ACT

RELATING TO MOTOR VEHICLES AND CELLULAR TELEPHONES; AMENDING SECTION 49-104, IDAHO CODE, TO REVISE DEFINITIONS AND TO PROVIDE A CORRECT CODE REFERENCE; AMENDING CHAPTER 14, TITLE 49, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 49-1431, IDAHO CODE, TO PROHIBIT THE USE OF A CELLULAR TELEPHONE WHILE OPERATING A MOTOR VEHICLE, TO PROVIDE FOR EXCEPTIONS, TO PROVIDE THAT THE SEIZURE OR FORFEITURE OF A CELLULAR TELEPHONE IS NOT AUTHORIZED UNLESS OTHERWISE PROVIDED FOR IN LAW AND TO PROVIDE A PENALTY.

S 1265
BY RESOURCES AND ENVIRONMENT COMMITTEE
AN ACT

RELATING TO OUTFITTERS AND GUIDES; AMENDING SECTION 36-2110, IDAHO CODE, TO REMOVE REFERENCE TO TERRITORIAL CONFLICTS BETWEEN BIG GAME OPERATIONS AS IT RELATES TO ADJUSTMENT OF TERRITORIAL SCOPE OF OPERATIONS OF LICENSED OUTFITTERS BY THE IDAHO OUTFITTERS AND GUIDES LICENSING BOARD.

S 1266**BY RESOURCES AND ENVIRONMENT COMMITTEE
AN ACT**

RELATING TO OUTFITTERS AND GUIDES; AMENDING SECTION 36-2109, IDAHO CODE, TO REVISE TERM OF LICENSE PROVISIONS AND TO MAKE TECHNICAL CORRECTIONS.

S 1267**BY JUDICIARY AND RULES COMMITTEE
AN ACT**

RELATING TO LICENSE FEES FOR LAWYERS; AMENDING SECTION 3-409, IDAHO CODE, TO REVISE LICENSE FEE PROVISIONS AND TO PROVIDE LICENSE FEE PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

[S 1261](#), [S 1262](#), [S 1263](#), [S 1264](#), [S 1265](#), [S 1266](#), and [S 1267](#) were introduced, read the first time at length, and referred to the Judiciary and Rules Committee for printing.

Senators Cameron, Coiner, Lodge, and McGee were recorded present at this order of business.

At this time Senator Davis arose on a point of personal privilege to announce that a distinguished visitor had arrived and President Little appointed a committee consisting of Senator Darrington, Chairman, and Senators Hill and Kelly to escort Chief Justice Daniel T. Eismann into the Senate Chamber where he delivered the following **State of the Judiciary Address**:

"Mr. President, Mr. President Pro Tem, and distinguished members of the Idaho Senate, my colleagues on the Court, and fellow Idahoans.

Thank you for inviting me to report on the state of the Idaho Judiciary. It is an honor to be invited into this historic chamber that has been refurbished to its prior glory in our magnificently restored and rededicated capitol. In a word, the state of the Idaho judiciary is "excellent."

I want to explain why I say that, but more importantly I want to thank you for all you do in helping us to provide an excellent Judiciary for all Idahoans. I will highlight some of the legislative action that has laid the foundation upon which Idaho's outstanding judicial system has been built.

Idaho's court system began, as did most states, with several disconnected and individualized courts. At statehood, Idaho's courts consisted of a supreme court, district courts, probate courts, and justices of the peace. Later, as towns grew, police courts were added. The justices of the peace and police court judges were not lawyers, had no formal legal training, and generally worked part-time, holding court in pool halls, barber shops, cafes, homes, or wherever it was convenient.

In the 1960's, the Legislature in its foresight began making the constitutional and statutory changes necessary to transform the various courts within our state into a modern, streamlined judicial system.

Prior to that time, the Supreme Court had no administrative authority over any of the lower courts. It could only review their decisions on appeal. In 1961, the Legislature proposed, and the voters approved, a constitutional amendment that provided, "The courts shall constitute a unified and integrated judicial system for administration and supervision by the Supreme Court." That has enabled the Idaho Judiciary to become a state court system serving citizens throughout Idaho, rather than simply a variety of

courts operating in separate and independent counties and judicial districts.

In 1967, the Legislature created the position of Administrative Assistant of the Courts which was changed seven years later to the Administrative Director of the Courts. William F. Lee was the first administrator, followed by Carl Bianchi, and then by Patti Tobias. I did not know Mr. Lee, but I am familiar with the work of both Carl and Patti. They have, with their vision and leadership, been indispensable in assisting the Supreme Court to administer a unified state court system in Idaho. That could not have occurred without the Legislature's foresight in creating that position.

Providing the Supreme Court with administrative staff and resources has over the years enabled it to implement various innovations necessary to continually improve our judicial system and to respond to new challenges. Those programs include trainings for judges, trial court administrators, court clerks, court reporters, jury commissioners, and court interpreters, and also multi-disciplinary trainings open to all who are involved in specific areas such as children and families and problem-solving courts. The Supreme Court also has thirty-four committees, some chaired by justices, whose mission is to seek out and recommend ways to improve specific areas of the legal system.

In 1969, the Legislature enacted legislation to create the magistrate division of the district court and to eliminate over 300 mostly part-time judicial positions in the probate courts, justice of the peace courts, and police courts. That legislation took effect on January 11, 1971, and so this month begins the fortieth year of the magistrate division of the district court.

Many of the non-lawyer judges were well-respected and were allowed to apply to be appointed magistrates. Of the first sixty magistrates, only twenty were lawyers. However, as the non-lawyer magistrates left office, the Legislature provided the necessary resources to replace them with attorneys.

I practiced in front of several non-lawyer magistrates, and, although they served well decades ago, the Legislature's commitment to replace them with attorneys has been one of the most significant contributions to the quality of justice in Idaho. The matters that come before magistrate judges throughout the state are simply too complex to be handled by persons who are not trained in the law.

There are now 87 magistrate judges in Idaho, all of whom are attorneys. Each county has at least one resident magistrate judge who is available not only to preside over most of the court cases in the county, but also to be available after hours for arrest and search warrants, involuntary commitments, and other emergency matters.

Because they do not preside over all types of cases, the magistrate division is often characterized as a limited jurisdiction court. Magistrates in Idaho have the broadest jurisdiction of any limited jurisdiction judges in the nation. They preside over some of the most significant and challenging cases in the court system, such as high conflict divorces and all cases involving child custody and support; proceedings to protect abused and neglected children and victims of domestic violence; and juvenile delinquency cases. They also preside over probate cases, some of which involve millions of dollars; guardianships and conservatorships to protect children and incapacitated persons; traffic and misdemeanor offenses; small claims cases; and civil cases seeking up to \$10,000. During each of the last ten years, there have been over 450,000 cases filed in the magistrate

division of the district court. In addition, magistrates often preside over problem-solving courts.

In my opinion, establishing a unified court system with accompanying administrative support and creating the magistrate division whose judges are now all attorneys are the two legislative achievements that are most responsible for insuring that Idaho provides high quality justice to those who come into our courts.

At one time, the Supreme Court shared this grand building with you and the executive branch. The Joint Finance and Appropriations Committee room is the old Supreme Court courtroom. The justices' offices and their law clerks were scattered throughout the capitol building on several different floors. The court did not even have a conference room in which to meet to discuss the cases after oral argument. In the late 1960's, the Legislature funded the Supreme Court building, which the court occupied in 1970. Providing the Court with a wonderful building to house the justices and support staff, and later the Court of Appeals, has enabled the Court to organize and administer a unified and integrated court system as envisioned by our Constitution. The building also serves as a symbol of justice for the people of Idaho.

As our state population grew, so did court caseloads, including appeals to the Supreme Court. The Legislature responded by creating the Idaho Court of Appeals, which began hearing cases in 1982. The number of appeals has steadily increased over the years, and the Court of Appeals has been essential to having appeals decided timely. Two sessions ago, the Legislature added a fourth judge to the Court of Appeals, for which we are very grateful. Chief Judge Karen Lansing of the Court of Appeals is present along with the Court's newest member, Judge John Melanson. Judges Gutierrez and Gratton are hearing cases today.

In the 1980's, the Legislature funded the Idaho Statewide Trial Court Automated Records System, commonly known as ISTARS, which was the first case management system in the nation that included every trial court case filed in the state. The funding also enabled the Court to place computers in all of the trial courts and clerks' offices in every county. The Legislature later established the ISTARS fund to provide dedicated funding to maintain and enhance that system. Our ability to use new technology has dramatically increased the efficiency of the Judiciary.

In 1986, the Legislature enacted the Unified Sentencing Act, under which judges set the minimum and maximum periods that a felon will be incarcerated. In 1995, it enacted the Juvenile Corrections Act, to transform juvenile justice by basing it upon accountability, community protection, and competency development. These enactments have greatly increased public trust and confidence in the adult and juvenile corrections systems.

Twice in 2009, Idaho received national recognition that highlights the excellence of the Idaho Judiciary and affirms the Legislature's dedication to insuring justice.

The first award was mentioned by the Governor in his State of the State address. It was the 2009 award for justice system innovation and improvement from the Justice Management Institute, headquartered in Denver, Colorado. Five key innovations were recognized that assist Idahoans, especially those residing in rural areas of our state.

Many Idahoans are unable to afford legal representation. In some of our courts, up to one-half of the litigants in contested

domestic relations cases are not represented by attorneys. The legal resources available through Idaho Legal Aid and the Idaho Volunteer Lawyers Program are simply insufficient to meet the demand for legal services for low-income Idahoans. The award stated, "Idaho pioneered the development of court assistance offices to provide direct assistance to Idahoans who need help in understanding how to seek resolution of their legal disputes." There are almost 50,000 requests for assistance annually through these offices.

Also, self-represented parties throughout the state can go online and use interactive software to create legal forms by following printed or oral instructions. The courthouse doors are open to anyone with access to the internet.

The Institute also noted the work in Idaho to help children and families, including domestic violence courts, parent education classes and mediation programs. It lauded Idaho's problem solving courts, stating, "Idaho was one of the first states to make drug courts, DUI courts, and mental health courts function successfully in rural environments where it is difficult to access treatment services." Finally, it commended the Supreme Court for establishing a training and certification program for court interpreters.

These many accomplishments are a direct result of your work with the courts to bring justice to Idahoans.

The second national recognition was by the National Association of Drug Court Professionals. Each year since 2003, its members throughout the nation have elected one or two persons from half a dozen nominees nationwide for induction into the Association's hall of fame. In 2009, I was inducted into the hall of fame. That award was really earned by all of those who have worked to establish, expand, and improve problem-solving courts. They include judges and court personnel, prosecutors and defense attorneys, the Departments of Health and Welfare and Corrections, the Office of Drug Policy, county officials, and the Idaho Legislature. It demonstrates that Idaho is a national leader in effectively addressing substance abuse and mental illness in the criminal justice system. National studies show that drug courts save taxpayers from \$4,000 to \$12,000 per offender, and those savings do not include reduced recidivism or the priceless value of restored families and saved lives.

In my experience, Idaho is unique in that all three branches of government have worked together effectively to address difficult issues. National surveys indicate that the public expects this level of cooperation to solve societal problems. We appreciate the dedicated efforts and commitment of the Senate Judiciary and Rules Committee chaired by Senator Denton Darrington. I want to reaffirm our commitment to continue that cooperation for the benefit of our fellow Idahoans.

The excellence of the Idaho Judiciary is in large part the result of the foresight of the Legislature and its continued support. We will work with you to devise solutions that will maintain that excellence in these tough economic times. On behalf of the court, I thank you for your part in building a judicial system in which litigants can have confidence that their cases will be heard timely and decided fairly according to the law."

The President thanked Chief Justice Eismann for his remarks and Senator Darrington, Hill, and Kelly escorted Chief Justice Eismann from the Chamber, and the Committee was discharged.

On request by Senator Davis, granted by unanimous consent, the remarks of Chief Justice Eismann were ordered spread upon the pages of the Senate Journal.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Fifteenth Order of Business.

Miscellaneous Business

On motion by Senator Davis, seconded by Senator Werk, by voice vote, the Senate adjourned at 11:50 a.m. until the hour of 11:30 a.m., Friday, January 22, 2010.

BRAD LITTLE, President

Attest: JEANNINE WOOD, Secretary